



U.S. Citizenship
and Immigration
Services

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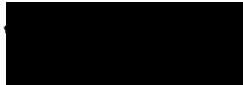
FILE:



Office: TEXAS SERVICE CENTER Date: OCT 26 2008

IN RE:

APPLICANT:



APPLICATION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent disclosure of information
in violation of privacy

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish his continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant submitted the following evidence of physical presence with the Form I-821:

1. a check dated May 7, 1998, addressed to the applicant in the amount of \$300 from Euroflora, Inc., in Fort Lauderdale, Florida;

2. a receipt for payment with no name;
3. 12 money order receipts with no name; and,
4. two Citibank payment receipts with no name.

On September 29, 2003, the applicant was requested to submit evidence establishing his physical presence in the United States since January 5, 1999. The applicant was also requested to submit a certified copy of the final court disposition of a misdemeanor charge of driving under the influence of alcohol. The applicant, in response, provided a copy of the court disposition of his misdemeanor charge. He provided the following evidence in an attempt to establish his qualifying continuous physical presence in the United States:

5. Western Union money transfer receipts indicating money was transferred to Honduras on the following dates: May 7, 1999; June 25, 1999; and, July 3, 1999;
6. a cash receipt dated July 29, 1999 from Bennett Auto Supply in Oakland Park, Florida, with no name;
7. six retail store cash receipts with no name; and,
8. eight money order receipts with no name.

The director determined that the applicant had failed to submit sufficient evidence to establish continuous physical presence in the United States since January 5, 1999, and denied the application on October 27, 2003.

On appeal, the applicant reasserts his claim to have lived in the United States since 1998, and requests the chance to live in the United States and pay his taxes. He submits money transfer receipts from Transportes Zuleta in Ft. Lauderdale, Florida, indicating money was transferred to Honduras on the following dates: January 27, 1999; February 5, 1999; March 3, 1999; April 16, 1999; May 20, 1999; June 7, 1999; July 13, 1999; August 21, 1999; and, September 1, 1999.

The money order receipts, retail store cash receipts, Citibank payment receipt, and the receipt from Bennett Auto Supply are not sufficient to establish the applicant's qualifying continuous physical presence in the United States because they have no name. The applicant's name on the Western Union money transfer receipts is written in a different handwriting from the remainder of the receipts. Finally, the dates on the Transportes Zuleta money transfer receipts appear to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant has not submitted sufficient, credible evidence to establish his qualifying physical presence in the United States. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not provided sufficient, credible evidence to establish continuous residence in the United States since December 30, 1998. He has also failed to provide any evidence to establish his eligibility for late registration. Therefore, the application also may not be approved for these reasons.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.